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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES,

Plaintiff,

v.

DURK BANKS,

Defendant.

Case No. 2:24-cr-00621-MWF

**DEFENDANT DURK BANKS'
MOTION FOR TO DISMISS FOR
VAGUENESS OR IN THE
ALTERNATIVE FOR A BILL OF
PARTICULARS**

Hearing

Date: Nov. 18, 2025

Time: 10:00 a.m.

Courtroom: 5A

Judge: Hon. Michael W. Fitzgerald

Defendant Durk Banks, through his attorneys, Drew Findling, Marissa Goldberg, Jonathan M. Brayman, and Christy O'Connor, hereby files this Motion to dismiss the Second Superseding Indictment (the "Indictment") or, in the alternative, for a bill of

1 particulars. Mr. Banks makes this motion under Federal Rule of Criminal Procedure
2 7(c)(1) and (f) and under the Fifth and Sixth Amendments to the Constitution.

3 This Motion is based on the attached memorandum, the files and records in this
4 case, and any other such evidence or argument that the Court may permit.
5

6 Respectfully submitted,

7 Dated: October 6, 2025

8 BY: /s/ Christy O'Connor

9 Drew Findling

10 Marissa Goldberg

11 Jonathan M. Brayman

12 Christy O'Connor

13 *Attorneys for Durk Banks*
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I. INTRODUCTION

This Indictment is impermissibly vague. It leaves the defense to guess as to the government’s theory of guilt, and it leaves the government free to change that theory as its cooperators’ stories morph over time to meet the demands of a conviction. Because the Indictment omits the factual particulars necessary to give Mr. Banks notice of the charges against him and to permit him to prepare his defense at trial, it fails to satisfy Fed. R. Crim. P. 7(c)(1) and the Fifth and Sixth Amendments. Dismissal is warranted. As an alternative to dismissal, this Motion seeks a bill of particulars under Fed. R. Crim. P. 7(f), along with the Fifth and Sixth Amendments.

Counts One and Two allege that Mr. Banks conspired to and participated in murder-for-hire—in other words, a murder “as consideration for the receipt of, and consideration for the promise and agreement to pay, anything of pecuniary value,” or what the government calls a “bounty.” *See* 18 U.S.C. § 1958(a), (b)(1) (defining “anything of pecuniary value” to include “anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage”).

The problem with Counts One and Two is that while they do allege in general terms that Mr. Banks offered a “bounty” for T.B.’s murder, they do not provide the specifics necessary for him to adequately prepare his defense, to prevent surprise at trial, to protect against double jeopardy, or to prevent the government from shifting its legal theory or straying from its grand jury presentation. The Indictment only alleges that Mr. Banks used unspecified “coded language” that (oxymoronic) “made clear” that T.B.’s killer would be rewarded with money or “lucrative music opportunities with OTF.” But according to the government, what was the “coded language” he used, upon which the grand jury based its charging decision? When, where, and how was the “coded language” bounty allegedly conveyed? What were the monetary rewards and music opportunities that were supposedly promised or delivered as consideration for the murder? Without

1 more, there is a real danger of a constructive amendment and/or fatal variance at trial, in
2 violation of the Constitution.

3 A similar deficiency plagues the “at the direction of” language that affects every
4 Count in the Indictment. While the Indictment alleges that the co-conspirators carried out
5 various acts “at the direction of” Mr. Banks’-- flying to Los Angeles; tracking, stalking,
6 and attempting to kill T.B. by gunfire; and procuring the firearms and equipment used to
7 do so-- it fails to give any specifics. When, where, how, and to whom did Mr. Banks’
8 give these alleged directions? To ensure the basic fairness of this trial, the defense is
9 entitled to know.

10 Given the vagueness of the Indictment’s “bounty” and “at the direction of”
11 allegations, if the Indictment is permitted to stand, a bill of particulars is warranted. Mr.
12 Banks requests a bill of particulars that reflects the theory upon which the grand jury
13 rested its charging decision, and that gives Mr. Banks fair notice of the allegations against
14 him. Specifically, we request the following information:

- 15 1. The language that Mr. Banks allegedly used to convey his offer of a
16 pecuniary bounty in exchange for the murder of T.B.;
- 17 2. The nature of the item of pecuniary value (the monetary reward or music
18 opportunity) that Mr. Banks is alleged to have offered and/or delivered in
19 exchange for the murder;
- 20 3. The date/time, audience, and circumstances of the alleged bounty offer;
- 21 4. The language used, date/time, audience, and circumstances related to the “at
22 the direction of” allegations in the Indictment.

23 This request is made under Federal Rule of Criminal Procedure 7(f), and the Fifth and
24 Sixth Amendments.

25 **II. FACTUAL BACKGROUND: THE INDICTMENT.**

26 The Indictment contains allegations that in order to induce T.B.’s murder, Mr.
27 Banks used “coded language” to offer a pecuniary bounty in the form of a monetary
28

1 reward or music opportunities with OTF. It also avers that co-conspirators took the
2 following actions “at the direction of” Mr. Banks: flying to Los Angeles; tracking,
3 stalking, and attempting to kill T.B. by gunfire; and procuring the cars, ski masks, and
4 firearms to do so.

5 **A. THE “BOUNTY” LANGUAGE.**

6 The Indictment’s “Introductory Allegations” contain the following language with
7 respect to alleged bounty:

- 8 • “After the murder [of D.B.], defendant BANKS made clear, in coded
9 language, that he would pay a bounty or monetary reward, and/or make
10 payment to anyone who took part in killing T.B. for his role in D.B.’s
11 murder.” (Indictment, p. 2.)

12 As to Count One, which charges Mr. Banks with conspiring to use interstate
13 facilities to commit murder-for-hire, the Indictment alleges:

- 14 • Defendants conspired and agreed to use facilities of interstate and foreign
15 commerce with the intent to murder T.B., “as consideration for the receipt
16 of, and consideration for a promise and agreement to pay, anything of
17 pecuniary value, namely, money and lucrative music opportunities with
18 OTF . . .” (*Id.* at 4.)
- 19 • “Defendant BANKS would place bounties on individuals that he and other
20 OTF members wanted to kill, including T.B.¹ As part of the bounty, co-
21 conspirators known and unknown, including defendant BANKS and
22 WILSON, would pay anyone who took part in the killing of T.B. and/or
23 reward individuals with lucrative music opportunities with OTF.” (*Id.* at 5.)

24
25 ¹ This paragraph appears to reference alleged 404(b) evidence. To the extent that
26 the government seeks admission of this or any other similar allegation under Fed. R.
27 Evid. 404(b), the defense objects to such admission, and in the alternative, requests a
28 government supplement mirroring the bill of particulars requested here as to each
“other bad act.”

- “Overt Act No. 1: Following the killing of D.B. on or about November 6, 2020, defendant BANKS, using coded language, told defendant WILSON, Co-Conspirators 2, 4, and 5, and others that he would pay a bounty or monetary reward to anyone who took part in the killing of T.B.” (*Id.* at 6.)

The language supporting Count Two is similar. That Count charges Mr. Banks with substantive murder-for-hire and aiding and abetting the same, and alleges:

- Defendants used facilities of interstate and foreign commerce with the intent to murder T.B., “as consideration for the receipt of, and consideration for a promise and agreement to pay, anything of pecuniary value, namely, money and lucrative music opportunities with OTF . . .” (*Id.* at 13.)

B. THE “AT THE DIRECTION OF” LANGUAGE.

The Indictment’s “Introductory Allegations” state that Mr. Banks directed the actions of his co-conspirators as follows:

- “. . . after learning of T.B.’s location, at the direction of defendant BANKS, defendants WILSON, JONES, LINDSEY, and HOUSTON, and Co-Conspirator 2 traveled from Chicago, Illinois, to Los Angeles, California, for the purpose of murdering T.B.” (*Id.* at 2-3.)
- “As alleged in Counts One through Three, on August 19, 2022, at the direction of defendant BANKS, defendants GRANT, WILSON, JONES, LINDSEY, and HOUSTON, and C-Conspirator 2 used two vehicles to track, stalk, and attempt to kil T.B. by gunfire . . .” *Id.* at 3.

With respect to Count One, conspiracy to commit murder-for-hire, the Indictment alleges:

- At the direction of defendant BANKS, defendant GRANT would procure cars, ski masks, and firearms that would be used by co-conspirators to find, track, and kill T.B. (p. 5)

III. LEGAL STANDARD

A. THE PLEADING STANDARDS AN INDICTMENT MUST MEET.

The Sixth Amendment declares that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusations [against him].” The Fifth Amendment provides that “[n]o person shall be held to answer for . . . [an] infamous, unless on a presentment or indictment of a Grand Jury.” Rule 7(c)(1) of the Federal Rules of Criminal Procedure implements these constitutional guarantees; it requires that an indictment contain “a plain, concise, and definite written statement of the essential facts constituting the offense charges.” Fed. R. Crim. P. 7(c)(1); *see United States v. Resendez-Ponce*, 127 S. Ct. 782, 788 (2007).

In keeping with these provisions, courts have long recognized that an indictment must state the alleged offense “with clearness, and all necessary certainty, to apprise the accused of the crime with which he stands charged.” *United States v. Mills*, 32 U.S. (7 Pet.) 138, 142 (1833); *see, e.g., United States v. Krasovich*, 819 F.2d 253, 254-55, (9th Cir. 1987); *United States v. Cecil*, 608 F.2d 1294, 129 (9th Cir. 1979) (per curiam). It is not enough for an indictment to plead mere legal conclusions. As the Supreme Court declared more than a century ago, “[F]acts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances.” *United States v. Cruikshank*, 92 U.S. (2 Otto) 542, 558 (1876); *see, e.g., United States v. Pirro*, 212 F.3d 86, 92-93 (2d Cir. 2000); *United States v. Murphy*, 762 F.2d 1151, 1154 (1st Cir. 1985). When the statute under which the offense is charged “includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species,--it must descend to particulars.” *Cruikshank*, 92 U.S. (2 Otto) at 558 (quotation omitted); *see, e.g., Russel v. United States*, 369 U.S. 749, 765 (1962); *Pirro*, 212 F.3d at 99.

1 A vague indictment poses four principal dangers. First, it does not permit the
2 defendant “to prepare an adequate defense [or] to address himself to the relevant
3 questions of fact and law.” *United States v. Zeelandelaar*, 498 F.2d 352, 356 n.1 (2d Cir.
4 1974); *see Russel*, 369 U.S. at 766-67; *Cecil*, 608 F.2d at 1296. Second, it creates the
5 risk that the defendant will be tried for an offense other than the one for which he was
6 indicted by the grand jury. *See Russell*, 369 U.S. at 770; *United States v. Du Bo*, 186 F.3d
7 1177, 1179-80 (9th Cir. 1999); *Cecil*, 608 F.2d at 1296; *United States v. Keith*, 605 F.2d
8 462, 464 (9th Cir. 1979). Third, it permits the government to shift its legal theory as the
9 case progresses. *See Russell*, 369 U.S. at 768; *Zeelandelaar*, 498 F.2d at 356 n.1. And
10 fourth, it creates the risk that the defendant will be deprived of the protection against
11 being tried twice for the same offense. *See Cecil*, 608 F.2d at 1296; *Zeelandelaar*, 498
12 F.2d at 356 n.1.

13 **B. A BILL OF PARTICULARS IS APPROPRIATE TO PROVIDE**
14 **OPERATIVE FACTS ABOUT THE GOVERNMENT’S THEORY OF**
15 **GUILT.**

16 Federal Rule of Criminal Procedure 7(f) governs the filing of a bill of particulars.
17 The relevant subsection states:

18 The court may direct the government to file a bill of particulars. The
19 defendant may move for a bill of particulars before or within 14 days after
20 arraignment or at a later time if the court permits. The government may
21 amend a bill of particulars subject to such conditions as justice requires.

22 Under Rule 7(f), this Court has broad discretion to order the government to provide
23 a bill of particulars. *See Wong Tai v. United States*, 273 U.S. 77, 82 (1927);
24 *United States v. Long*, 706 F.2d 1044, 1054 (9th Cir. 1983). The 1966 amendment to
25 Rule 7(f), which eliminated the good-cause requirement for a bill of particulars, was
26 “designed to encourage a more liberal attitude by the courts for bills of particulars
27 without taking away the discretion which courts must have in dealing with such
28

1 motions in individual cases.” Federal Rule of Criminal Procedure 7(f) advisory
2 committee note. *See also United States v. Addonizio*, 451 F.2d 49, 64 (3d Cir. 1971);
3 *United States v. Smith*, 65 F.R.D. 464, 468 (N.D. Ga. 1974). In accordance with the
4 spirit of the 1966 amendment, defendants should “be given the benefit of the doubt in
5 gray areas.” *United States v. Thevis*, 474 F. Supp. 117, 124 (N.D. Ga. 1979), *aff’d*, 665
6 F.2d 616 (5th Cir. 1982); *accord United States v. Rogers*, 617 F. Supp. 1024, 1028 (D.
7 Colo. 1985).

8 A bill of particulars has three separate purposes: (1) “[t]o inform the defendant of
9 the nature of the charge against him with sufficient precision to enable him to prepare
10 for trial”; (2) “to avoid or minimize the danger of surprise at the time of trial”; and (3)
11 “to enable [the defendant] to plead his acquittal or conviction in bar of another
12 prosecution for the same offense when the indictment itself is too vague, and indefinite
13 for such purpose.” *United States v. Ayers*, 924 F.2d 1468, 1483 (9th Cir. 1991)
14 (citation and quotation marks omitted). *See also United States v. Burt*, 765 F.2d 1364,
15 1367 (9th Cir. 1985) (same). A bill of particulars “is intended to supplement the
16 indictment by providing more detail of the facts upon which the charges are based.”
17 *United States v. Inryco, Inc.*, 642 F.2d 290, 295 (9th Cir. 1981).

18 IV.ARGUMENT

19 A. THE INDICTMENT’S “BOUNTY” AND “AT THE DIRECTION OF” 20 ALLEGATIONS FORM THE HEART OF THE CASE AGAINST MR. 21 BANKS.

22 What the Indictment fails to tell us are the very things the defense is entitled to
23 know: the “operative facts” underlying the government’s theories of Mr. Banks’ guilt.
24 There is no allegation here that Mr. Banks physically participated in the stalking and
25 shooting at issue. The crux-- the entirety, even-- of the government’s case, then, is first,
26 that he somehow offered and/or paid some sort of unspecified “bounty” in exchange for
27 the murder, and second, that he directed in some unspecified way the stalking, the firearm
28

1 possession, the murder, and perhaps also the murder bounty's payment.² Those are the
2 only two links-- the "bounty" and Mr. Bank's direction of others-- alleged to connect him
3 to the charged crimes.

4 Indeed, if the government cannot prove up these links beyond a reasonable doubt,
5 its case against Mr. Banks fails. As to the bounty offer, it is an element of the murder-
6 for-hire charged in Counts One and Two that Mr. Banks "gave or promised something
7 of pecuniary value in exchange for seeking [the] murder." *See United States v. Chong*,
8 419 F.3d 1076, 1081 (9th Cir. 2005) ("[t]he intent to pay someone to commit murder is .
9 . . a critical element of 'murder-for-hire'" (citing *United States v. Ritter*, 989 F.2d 318,
10 321 (9th Cir. 1993)). *See also United States v. Wicklund*, 114 F.3d 151, 154 (10th Cir.
11 1997) (rejecting government's claim that pecuniary consideration element could be met
12 where the defendant merely expected a benefit). According to the legislative history of §
13 1958:

14 [T]he murder must be carried out or planned as consideration for the receipt of
15 'anything of pecuniary value.' This term is defined to mean money, a negotiable
16 instrument, a commercial interest, or anything else the primary significance of
17 which is economic advantage....

18 *Chong*, 419 F.3d at 1081 (citing S. Rep. 98-225, at 306 (1983)). With respect to every
19 other count in the Indictment, the "at the direction of" language is the only thing
20

21
22 ² Between the First Superseding Indictment and the Second Superseding
23 Indictment, the government deleted the following language: "At the direction of
24 defendant BANKS, defendant WILSON would pay the bounty or monetary reward,
25 and/or cause payment to be made for the killing of S.R., on behalf of co-conspirators
26 known and unknown, to the conspirators hired to kill T.B." Dkt. No. 27, p. 6 at ¶ 9. If the
27 government disavows the allegation that Mr. Banks directed co-defendant Wilson to pay
28 the bounty and does not intend to offer proof of this at trial, the defense deserves to know
that for trial preparation purposes. If evidence on this point was presented to the
government or to a grand jury, and the government later deduced that evidence to be
unreliable, the defense requests discovery under *Brady v. Maryland*, 373 U.S. 83 (1963).

1 connecting Mr. Banks to these crimes.³ As these two subject matters are at the heart of
2 the government's prosecution of Mr. Banks, so too are they at the heart of his
3 Constitutionally-guaranteed ability to mount a defense.

4 **B. THE INDICTMENT'S LACK OF SPECIFICITY AS TO ALLEGED**
5 **BOUNTY AND DIRECTIONS IN FURTHERANCE OF MURDER.**

6 Despite the centrality of the "bounty" and "at-the-direction-of" allegations, the
7 Indictment lacks the specifics of the government's theory on those points. By way of
8 example, we have the issue of the "coded language" supposedly used to convey the
9 bounty. The Indictment alleges that Mr. Banks "*made clear, in coded language*, that he
10 would pay a bounty or monetary reward, and/or make payment to anyone who took part
11 in killing T.B. for his role in D.B.'s murder." (Indictment, p. 2.) (emphasis added.) *See*
12 *also, id.* at 6 ("Following the killing of D.B. on or about November 6, 2020, defendant
13 BANKS, using coded language, told defendant WILSON, Co-Conspirators 2, 4, and 5,
14 and others that he would pay a bounty or monetary reward to anyone who took part in
15 the killing of T.B.") Let's consider some potential defenses to this allegation: 1) that Mr.
16 Banks never used the alleged coded language (e.g., he was not present when the words
17 are alleged to have been uttered, or there is no record of a corresponding phone call or
18 text message); and 2) that the language at issue does not mean what the government says
19 it means. How can Mr. Banks be prepared to present either or both of these defenses if
20 he does not know the specific circumstances of this alleged "coded language" bounty?
21 What code words did he supposedly use, that are alleged to mean what the government
22 says they mean? Was the "bounty offer" conveyed in person, over the phone? Where and
23 when? Mr. Banks is entitled to know what "coded language" the government presented
24

25 ³ The government alleges aiding and abetting liability as to Counts Two through
26 Four. To the extent that it intends to show that Mr. Banks aided/abetted in some way
27 other than by directing his co-conspirators to murder (Count Two), stalk (Count Three),
28 and possess firearms in relation to murder and stalking (Count Four), the defense requests
the specifics of those allegations as well.

1 to the grand jury⁴ and will thus rely upon at trial, and the circumstances surrounding this
2 alleged communication.

3 The same holds true for the nature of the pecuniary consideration Mr. Banks
4 supposedly offered or gave. The Indictment avers that the murder was undertaken “as
5 consideration for the receipt of, and consideration for a promise and agreement to pay,
6 anything of pecuniary value, *namely, money and lucrative music opportunities with OTF*
7 *...*” (*Id.* at 13.) (emphasis added.) But what sum of money is alleged to have been offered
8 as bounty? In cash, via a wire transfer, or a written check? What were the “lucrative
9 music opportunities” that served as the alleged consideration for the T.B.’s murder? Was
10 it a feature on one of Mr. Banks’ songs that the government claims was offered and/or
11 furnished as consideration for the murder? If so, which song? The defense is entitled to
12 know.

13 And finally, the Indictment alleges in general terms that various acts in furtherance
14 of the charged crimes were undertaken “at the direction of” Mr. Banks. *See* Indictment
15 at 2-3 (co-conspirators traveled to Los Angeles after learning of T.B.’s location); *id.* at 3
16 (co-conspirators used to vehicles to track, stalk and attempt to kill T.B. by gunfire); *id.*
17 at 5 (defendant Grant procured cars, ski masks, and firearms used to track and kill T.B.).
18 At trial, Mr. Banks intends dispute that any such actions were undertaken at his direction.
19

20
21 ⁴ The government is not permitted to prosecute Mr. Banks based on allegations
22 other than those presented to and approved by the grand jury. *See, e.g., United States v.*
23 *Wilbur*, 674 F.3d 1160, 1177-7 (9th Cir. 2012) (reversible constructive amendment where
24 the charging terms of an indictment are altered, either literally or in effect, by the
25 prosecutor or court after the grand jury has passed upon them); *United States v. Choy*,
26 309 F.3d 602, 608 n.5 (9th Cir. 2002) (fatal variance where a defendant “is charged with
27 one set of facts constituting a crime but is convicted of another set of facts constituting a
28 crime”); *United States v. Griffin*, 215 F.3d 866, 868 (8th Cir. 2000) (reversal required
where variance prejudices defendant by “depriving him of adequate notice of the charges
he must defend”). It would be reversible error for the government, at trial, to ask the jury
to rest its conviction upon an alleged bounty offer not presented to and relied upon by
the grand jury.

1 He cannot adequately do so, however, without knowing the government's theory on this
2 point: how, when, and to whom is he alleged to have conveyed these directions? Without
3 a bill of particulars, the specifics of these accusations will come as a surprise to the
4 defense at trial.

5 **C. THE INDICTMENT SHOULD BE DISMISSED AS VAGUE.**

6 The Indictment here, on both the "bounty" and "at the direction of" points, presents
7 all the dangers of a vague indictment. It does not permit Mr. Banks to "prepare an
8 adequate defense," because the defense must guess what aspect of Mr. Banks' alleged
9 interactions with purported co-conspirators during the time period between on or before
10 November 6, 2020 (D.B.'s murder) and August 22, 2022 (the shooting at issue here) the
11 government will claim at trial constituted 1) an offer of bounty, and 2) directions in
12 furtherance of the murder. The Indictment creates a substantial risk that Mr. Banks will
13 be tried based on conduct other than the conduct the grand jury found when it returned
14 the Indictment. It permits the government to shift its theories to meet the vagaries of trial,
15 including the stories of cooperating witnesses whose very lives depend upon pleasing the
16 prosecution. And the Indictment affords Mr. Banks scant protection against being tried
17 twice for the same offense.

18 Courts have repeatedly dismissed indictments far more detailed than this one. In
19 *Russell*, for example, the Supreme Court dismissed indictments purporting to charge
20 offenses under 2 U.S.C. § 192 for failing to answer questions before a congressional
21 committee. The Court found the indictment inadequate-- even though they stated the
22 date, place, and circumstances of the questioning and identified the questions each
23 defendant had refused to answer-- because they failed to identify the subject under
24 inquiry when the defendant was questioned. *See* 369 U.S. at 752-53, 765-72. The
25 Indictment here has the reverse of the defect in *Russell*; it identifies in general terms what
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1 Mr. Banks is alleged to have done, but it gives no specifics about Mr. Banks' alleged
2 conduct that amounted to 1) a bounty offer, and 2) directions in furtherance of murder.

3 In *Cecil*, the Ninth Circuit found insufficient an indictment for conspiracies to
4 import and distribute marijuana. The indictment tracked the language of the relevant
5 statutes, identified two locations where the conspiracies occurred, gave the names of the
6 co-conspirators, and identified the objects of the alleged conspiracies. But the indictment
7 did not "state any other facts or circumstances pertaining to the conspiracy or any overt
8 acts done in furtherance thereof." 608 F.2d at 1296-97. And, although the indictment
9 identified a four-month period for each conspiracy, it did not limit the conspiracies to
10 that period; instead, the dates were "open ended in both directions." *Id.* at 1297. The court
11 of appeals found that "the indictment fails to allege sufficient facts to facilitate the proper
12 preparation of a defense and to ensure that the defendants were prosecuted on facts
13 presented to the Grand Jury." *Id.* The Indictment here is even less specific than the
14 indictment found defective in *Cecil*. It covers at least 18 months, with an open-ended
15 conspiracy start date, and contains no location where the Mr. Banks was alleged to have
16 offered a bounty or directed others. And while it does contain a recitation of overt facts
17 in furtherance of the conspiracy, none of those facts speak to the only two alleged links
18 truly tying Mr. Banks to these crimes: the aboutny and directions in furtherance of
19 murder.

20 In *United States v. Pickett*, 209 F.Supp.2d 84 (D.D.C. 2002), Judge Thomas
21 Penfield Jackson dismissed an obstruction count less bare-bones than our Indictment's
22 treatment of the alleged bounty and directions in furtherance of murder. That count
23 alleged that on November 7, 2001, the defendant knowingly and willfully obstructed and
24 interfered with the Capitol Police in the performance of their protective functions. Judge
25 Jackson found those allegations insufficient under Rule 7(c)(1), because they did not
26 fairly inform the defendant of his allegedly unlawful conduct. *See* 209 F.Supp.2d at 88-
27 89. Mr. Banks' Indictment--which does not even confine the "bounty" and "at the
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1 direction of” allegations to a single day, as the count at issue in *Pickett* did--should
2 similarly be dismissed. *See also, e.g., Murphy*, 762 F.2d at 1154 (witness intimidation
3 indictment deficient for failing to specify the “official proceeding” at issue); *United*
4 *States v. Yejo*, 634 F. Supp. 630, 634 (D.P.R. 1986) (false claims and conversion charges
5 dismissed, despite tracking statutory language, because the counts contained “conclusory
6 statement which are insufficient to inform the defendant with, at least, minimal
7 particularity of what conduct constituted the alleged false claim or the conversion in order
8 for him to prepare an adequate defense”).

9 Indictments are rare that purport to charge offenses committed in part through a
10 defendant’s statements but fail to identify either the alleged statements or the respect in
11 which they meet the requirements of conviction. When such indictments have appeared,
12 however, courts have not hesitated to dismiss them. In *United States v. Nance*, 533 F.2d
13 699 (D.C. Cir. 1976), for example, the indictment alleged fraud through false pretenses
14 and tracked the language of the relevant statute, but it failed to specify the allegedly false
15 representations. *See id.* at 701-02. The court of appeals reversed the false pretenses
16 conviction. Rejecting the government’s contention that the district court could have
17 ordered a bill of particulars, the court observed that “absent any allegation whatsoever in
18 the indictment as to what the false pretenses were, the United States Attorney would have
19 a free hand to insert the vital part of the indictment without reference to the grand jury.
20 The law does not vest him with such authority.” *Id.* at 701. It added that “[w]here guilt
21 depends so crucially upon . . . a specific identification of fact, our cases have uniformly
22 held that an indictment must do more than simply repeat the language of the criminal
23 statute.” *Id.* (quoting *Russell*, 369 U.S. at 764). The *Nance* reasoning applies squarely to
24 this Indictment, which omits any allegation whatsoever as to what statements or actions
25 constitute either a bounty offer or gift, *see Chong*, 419 F.3d at 1081 (a gift or promise of
26 something of pecuniary value in exchange for seeking murder is an essential element of
27 §1958) or directions in furtherance of murder.

1 The Tenth Circuit’s decision in *United States v. Curtis*, 506 F.2d 985 (10th Cir.
2 1974), similarly demonstrates the insufficiency of the Indictment. The *Curtis* indictment
3 charged a scheme and artifice to defraud through “false and fraudulent pretenses,
4 representations and promises,” but as in *Nance*--and like the Indictment here--it did not
5 identify the statements alleged to constitute an element of the offense (there, the false
6 representations). The court of appeals reversed the conviction and ordered the indictment
7 dismissed. The court declared that a proper charge must identify “the particular pretenses,
8 representations or promises claimed to have been false,” and it reiterated that “it is not
9 sufficient in this regard to merely plead the statutory language.” *Id.* at 990; *see also, e.g.,*
10 *United States v. Fried*, 450 F. Supp. 90, 93-94 (S.D.N.Y. 1978) (dismissing false
11 statement counts, even though they tracked the language of the statute and specified the
12 documents and the dates at issue, because “there is no allegation in any of these counts
13 of the specific respect or respects in which the [document] referred to on any particular
14 line was false”); *United States v. Apex Distributing Co.*, 148 F. Supp. 365, 371-72 (D.R.I.
15 1957) (dismissing false claim counts because they lack “any description of said false,
16 fictitious or fraudulent claim” and “any particular or particulars wherein said claim was
17 false, fictitious and fraudulent”); *United States v. Bougie*, 118 F. Supp. 359 360 (S.D.
18 Cal. 1954) (false statement count defective for failing to allege respect in which statement
19 was false).

20 These cases stand for the fundamental and decisive point: an indictment charging
21 a federal crime committed in part through statements must identify both the statements
22 and the respect in which they satisfy the requirements of guilt. Because the Indictment
23 does not satisfy even that minimal pleading standard, it must be dismissed.

24 **D. AT THE VERY LEAST, THE COURT SHOULD ORDER A BILL OF**
25 **PARTICULARS.**

26 To be clear, even a bill of particulars cannot save a defective indictment. *See, e.g.,*
27 *Russell*, 369 U.S. at 770-71; *Cecil*, 608 F.2d at 1295. Thus, although Mr. Banks moves
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1 for a bill of particulars in the alternative, those particulars will not remedy the defects
2 identified here.

3 Nevertheless, many courts have granted a request for a bill of particulars when the
4 request, as this one does, seeks the operative facts related to the charged offense missing
5 from an indictment. *See United States v. Honneus*, 508 F.2d 566, 570 (1st Cir. 1974)
6 (allowing particulars on where alleged offense took place); *United States v. Barket*, 380
7 F. Supp. 1018, 1020 (W.D. Mo. 1974) (allowing particulars “fully and fairly” advising
8 defendant of bank fraud charges); *United States v. Manetti*, 323 F. Supp. 683, 696 (D.
9 Del. 1971) (allowing particulars for all “central facts” such as the names of participants
10 in conversations and time and place of all transactions central to charge); *United States*
11 *v. Davis*, 330 F. Supp. 899, 902-03 (N.D. Ga. 1971) (allowing particulars as to exact
12 dates and places relating to all alleged offenses). And while a defendant is not entitled to
13 know every piece of *evidence* the government will rely upon at trial, he is entitled to
14 know the government’s *theory* of the case. *E.g. Yeargain v. United States*, 314 F.2d 881
15 (9th Cir. 1963) (in a counterfeit currency case, information on the bills’ denominations,
16 that they were Federal Reserve Notes, the date and time of passing, and the exact street
17 location of the passing was sufficient to apprise defendant of the government’s theory).

18 *United States v. Trumpower* is instructive. 546 F.Supp.2d 849 (E.D. Cal. 2008).
19 There, the defendant was charged with laundering the proceeds of a mail and wire fraud
20 scheme. Although the indictment’s money laundering charges contained specific factual
21 pleadings describing the time, place and circumstances of the monetary transactions, the
22 indictment “did not plead the factual circumstances of the specific mail or wire fraud that
23 produced those funds.” *Id.* at 851-852. The only description of the fraud was “in
24 completely generic terms.” *Id.* The court reasoned that “[a] defense cannot be marshaled
25 unless the defendant knows both the statute allegedly violated and the conduct which
26 allegedly violates the statute.” *Id.* at 852. The court evaluated the need for a bill of
27 particulars by considering what the government would be required to prove at trial,
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1 noting that in a money laundering case, “the government must ultimately prove that the
2 specific funds can be related to a specific crime.” *Id.* Thus, “[w]ithout any pleading as to
3 the factual context for that specific crime . . . a serious question as to adequate notice has
4 been raised.” *Id.* The court held that even a bill of particulars providing “specific
5 descriptions of the type of misrepresentations Trumpower had used to carry out his
6 fraudulent scheme” was insufficient. *Id.* In order to allow for adequate trial preparation
7 and prevent surprise at trial, the court ordered a bill of particulars containing “(1) the
8 circumstances of the crime or crimes from which the laundered money was derived,
9 including how and when those crimes were accomplished, (2) in the case of mail or wire
10 fraud, the particular false material representations and particular mailings or wire
11 transactions; (3) who committed the crimes; (4) who were the victims of the crimes; and
12 (5) . . . how the allegedly laundered money can be identified as the proceeds of criminal
13 conduct to the extent that it was ever commingled with legitimately derived funds.” *Id.*
14 *See also United States v. Solnin*, 81 F. Supp. 3d 193, 208-09 (E.D.N.Y. 2015) (requiring
15 disclosure of identities of mail fraud victims, and corresponding emails and/or items
16 underlying charged counts). As was the case in *Trumpower*, our Indictment fails to plead
17 the factual context for the specific crimes charged. A bill of particulars, at a minimum, is
18 warranted.

19 V. CONCLUSION

20 For the foregoing reasons, the Court should dismiss the Indictment against Mr.
21 Banks. In the alternative, the Court should order the bill of particulars described above.
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